

### **REMARKS**

This is a full and timely response to the outstanding nonfinal Office Action mailed August 13, 2003. Reconsideration and allowance of the application and presently pending claims 1-41 are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-41 remain pending in the present application. More specifically, claims 1, 12, 23-34 and 36-41 are directly amended. These amendments are specifically described hereinafter. It is believed that the foregoing amendments add no new matter to the present application.

2. Response to the Denial of the Claim to Domestic Priority

In the Office Action, at section 2, the claim to domestic priority to the provisional application filed on February 14, 2000 (Provisional Application No. 60/182,346) is denied. Applicant respectfully traverses the denial of the claim to priority to the above-described case since FIG. 1 of the Provisional Application clearly shows the claimed subject matter alleged to have been omitted in the Provisional Application and clearly demonstrates that the Applicant had completed at least conception of the invention before the time of the filing date of the Provisional Application, followed by due diligence evidenced by at least filing of the instant application on May 30, 2000. However, to advance prosecution of the instant case, Applicant amends the specification herein to delete the claim of the benefit of priority to the Provisional Application No. 60/182,346.

3. Acknowledgement of Acceptance of the Drawings

In the Office Action, at section 3, the drawings are accepted. Applicant thanks the Examiner for the acceptance of the Application drawings.

4. Response to Rejection of Claims 24-33 Under 35 U.S.C. §112, Second Paragraph

In the Office Action, at sections 4 and 5, claims 24-33 are rejected under 35 U.S.C. 112, second paragraph, since these claims depend upon claim 23, a method claim, yet improperly refer to claim 23 (or their respective parent claim) as a "system" claim in the preamble of these claims.

At paragraph 6 of the Office Action, these claims are interpreted as referring to the “method of claim” 23 (or their respective parent method claim). Applicant agrees with the Examiner’s interpretation of these claims.

Applicant amends claims 23-33 herein to correct this apparent typographical error by deleting the word “system” and adding the word “method” to these claims, and accordingly, respectfully submit that the rejection of claims 23-33 under 35 U.S.C. 112, second paragraph, has been overcome. Applicant thanks the Examiner for interpreting claims 23-33 so that prosecution of the instant case could proceed.

5. Response to Rejection of Claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32 and 34-41 Under 35 U.S.C. §102(e)

In the Office Action, claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32 and 34-41 stand rejected under 35 U.S.C. §102(a) as allegedly being unpatentable by *Engel et al.* (U.S. Patent 6,320,585), hereinafter *Engel*.

a. Independent Claim 1

In the Office Action, at paragraph 8.1, it is alleged that “EN teaches displaying resource performance and utilization information. Specifically, as per claim 1, EN teaches a system for determining and predicting performance of a communication device (CL1, L54 to CL2, L5; CL2, L14-29; CL9, L5-6).” The Office Action then alleges that *Engel* teaches a “means for specifying a report period, said report period corresponding to a reporting period of interest (CL2, L14-29; CL8, L20-23)” and then alleges that *Engel* teaches a “means for specifying a plurality of summary periods, each said summary period corresponding to a portion of said reporting period (CL1, L54 to CL2, L5; CL8, L22-34)” as recited in claim 1.

However, *Engel requires* that “the polled data be collected on the relevant variable for a base line period (e.g. 3-6 weeks).” (Col. 8, lines 21-22.) In *Engel* “from the polled data that is accumulated in the database at the console, the report generator produces a history table 90, such as shown in FIG. 9. The history table 90 includes a record 92 for *each day* of a *baseline period*. ... The granularity of the data that is stored in the history table is one day. Thus, the entry that is placed in the time field is the day for which the data corresponds.” (Emphasis added, Col. 8,

lines 35-43.) Accordingly, “the report generator then produces a stack bar for each segment (step 115).” (Col. 7, lines 35-36.)

Applicant respectfully points out that the *Engel* stack bar *corresponds to a time period of one complete day* because *Engel* teaches that “it should be noted that if data for some of the polling cycles was not received, the total number of polls represented was not received, the total number of polls represented in the segment table will be less than the total number of possible polls for the day. In this case, the height of the stack bar (i.e., the combined height of the individual sections) will be less than 100%. In other words, when a ‘white space’ appears at the top of the bar this indicates to the network administrator that some problem interfered with the collection of data for that segment.” (Col. 7, lines 56-64.) The *Engel* stack bars are illustrated in *Engel* FIG. 2. *Engel* further emphasizes the point that every stack bar corresponds *to one complete day* by stating that “the total height of a stack bar 30 is a sum of the heights of all of the sections. If the segment was fully operational and all bandwidth utilization statistics for it were successfully gathered throughout the day, the total height will be 100%. However, if the segment was not operational throughout the day or less than all bandwidth utilization statistics were successfully gathered, the total height 16 will be less than 100%.” (Col. 5, lines 8-15.)

Applicant respectfully refers the Examiner to the Applicant’s FIG. 2, wherein the claimed “Summary Period” illustrated in FIG. 2 is from Monday through Friday, for the hours of 8:00 a.m. to 5:00 p.m., which is entirely different from the *Engel* stack bar 30 corresponding to one entire day. Applicant asserts that claim 1, as amended, is clearly distinguishable from the above-described teachings of *Engel* for at least the following reasons.

For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim. See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988). Applicant respectfully submits that independent claim 1, as amended, is allowable for at least the reason that *Engel* does not disclose, teach, or suggest the feature of a “means for specifying a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” and a “means for presenting and displaying said plurality of performance parameters associated with each said summary period, and for presenting and

displaying said plurality of trend parameters associated with said report period, in a trend report” as recited in claim 1. Since *Engel* does not disclose, teach, or suggest using the above-recited features of claim 1, the rejection should be withdrawn.

b. Independent Claims 12, 23, 34 and 36-41

Applicant respectfully submits that independent claims 12, 23, 34 and 36-41, as amended, are allowable for at least the reason that *Engel* does not disclose, teach, or suggest the features of:

“a user interface, wherein a user specifies a report period, said report period corresponding to a reporting period of interest, and said user specifies a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” as recited in claim 12,

“specifying a report period, said report period corresponding to a reporting period of interest and a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” as recited in claim 23,

“receiving a specification for a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” as recited in claim 34,

“retrieving a plurality of selected data parameters from a communication device, such that said plurality of selected data parameters corresponds to a plurality of summary periods, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” as recited in claim 36,

“a user interface, wherein a user specifies a report period, said report period corresponding to a reporting period of interest, and said user specifies a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” as recited in claim 37,

“means for specifying a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” as recited in claim 38,

“specifying a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” as recited in claim 39, and

“a user interface, wherein a user specifies a report period, said report period corresponding to a reporting period of interest, and said user specifies a plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a portion of a day, and wherein said portion is less than a day” as recited in claims 40 and 41.

Applicant respectfully refers the Examiner to the arguments above for allowability of claim 1 which also demonstrates that the recited features of independent claims 12, 23, 34 and 36-41 are not disclosed, taught or suggested by *Engel*. Since *Engel* does not disclose, teach, or suggest using the above-recited features of claims 12, 23, 34 and 36-41, the rejection to claims 12, 23, 34 and 36-41 should be withdrawn.

c. Dependent Claims 2, 8-10, 13, 19-21, 24, 30-32 and 35

Because independent claim 1 is allowable over the cited art of record, dependent claims 2 and 8-10 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 2 and 8-10 contain all features/elements of independent claim 1. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

Similarly, because independent claims 12, 23 and 34 are allowable over the cited art of record, dependent claims 13 and 19-21 (which depend from independent claim 12), dependent claims 24 and 30-32 (which depend from independent claim 23), and dependent claim 35 (which depends from independent claim 34), are allowable as a matter of law for at least the reason that dependent claims 13, 19-21, 24, 30-32 and 35 contain all features/elements/steps of their respective independent claim. Accordingly, the rejection to these claims should be withdrawn.

6. Response to Rejection of Claims 3-7, 11, 14-18, 22, 25-29 and 33 Under 35 U.S.C. §103

In the Office Action, claims 3-6, 14-17 and 25-28 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel et al.* (6,320,585), hereinafter *Engel*, in view of *Hassell et al.* (U.S. Patent Application 2002/0018473), hereinafter *Hassell*. Additionally, claims 7, 18 and 29 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel* in view of *Hassell*, and further in view of *VanDervort* (5,699,346). Finally, claims 11, 22 and 33 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel* in view of *Colmant et al.* (6,144,662).

Because independent claim 1 is allowable over the cited art of record, dependent claims 3-7 and 11 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 3-7 and 11 contain all features/elements of independent claim 1. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

Similarly, because independent claims 12 and 23 are allowable over the cited art of record, dependent claims 14-18 and 22 (which depend from independent claim 12), and dependent claims 25-29 and 33 (which depend from independent claim 23), are allowable as a matter of law for at least the reason that dependent claims 14-18, 22, 25-29 and 33 contain all features/elements/steps of their respective independent claim. Accordingly, the rejection to these claims should be withdrawn.

**CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-41 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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